MPMc
Oregon City, OR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EDWARDS PAINTING, INC.

and

Case 19-CA-116399 and
19-CA-122730

INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES, DISTRICT COUNCIL 5, AFFILIATED
WITH INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES

ORDER DENYING MOTION FOR RECONSIDERATION AND
REOPENING THE RECORD

On November 30, 2016, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding. 364 NLRB No. 152. Therein, the Board found that the Respondent, Edwards Painting, Inc., violated Section 8(a)(1) and 8(a)(3) of the Act during an organizing campaign by making threatening and coercive statements, interrogating its employees, discharging employees, and refusing to hire employees because of their affiliation with the Union.

On December 28, 2016, the Respondent's co-owner, Gene Edwards, proceeding *pro se*, filed a Motion for Reconsideration and/or Reopening of the Record.[1] No opposition to the Respondent's motion has been filed.

Having duly considered the matter, we find no merit to the Respondent's motion.

[1] The Respondent, without advice of counsel, erroneously filed its one and one-half page motion with Region 19. Thereafter, on January 3, 2017, the Regional Director referred the Respondent's motion to the Board for processing.

In part, the Respondent's motion addresses matters decided previously, but in addition the Respondent appears to make two arguments which have not previously been raised before the Board. First, the Respondent argues that the judge exhibited "extreme animus" toward the Respondent during the course of the hearing. Apparently in support of this argument, the Respondent alleges that during a recess the judge met with counsel for the General Counsel and a Union representative in his chambers without a representative of the Respondent present. Second, the Respondent, apparently relying on events that occurred after the hearing, argues that the Board erroneously affirmed the judge's findings of the Section 8(a)(3) discharges of two Union salts because, according to the Respondent, it continued to retain and employ other known Union supporters until they voluntarily left its employ.

Assuming, without deciding, that the Respondent's motion comports with the Board's Rules and Regulations, we find that the Respondent has failed to identify any material error or present the kind of "extraordinary circumstances" required for reconsideration or reopening of the record under Section 102.48(c)(1) of the Board's Rules and Regulations.[2]

In particular, the Respondent's new allegation of bias by the judge is untimely and, in any event, wholly unsubstantiated. The Respondent has not previously asserted bias by the judge or that it was excluded from an alleged meeting between the judge and the other parties, and the Respondent has provided no explanation for failing to

[2] See, e.g., *Philips Electronics North America Corp.*, 2014 WL 6682356 (2014); and *Copper River of Boiling Springs, LLC*, 360 NLRB 459, 459 fn. 1 (2014) (considering *pro se* charging parties' exceptions even though they did not comply fully with the Board's Rules and Regulations).

raise these matters earlier. Nor has the Respondent provided any evidence or facts surrounding this alleged meeting or explained how this meeting, if it occurred, altered the outcome of this case. See *Opportunity Homes*, 315 NLRB 1210, 1210 fn. 5 (1994) ("[I]t is well-established that the Board need not reopen the record unless the moving party has demonstrated that the new evidence would require a different result."), enfd. 101 F.3d 1515 (6th Cir. 1996); and *Grinnell Fire Protection Systems*, 307 NLRB 1452, 1452 fn. 2 (1992) ("Sec[tion] 102.48(d)(1) provides, inter alia, that the movant shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result.").

The Respondent's assertion that it continued to employ Union supporters subsequent to the Section 8(a)(3) discharges and/or the hearing likewise suffers from a lack of explanation and supporting evidence. Even if credited, however, the fact that the Respondent continued to employ other Union supporters is not the type of new evidence that would require reconsideration or reopening of this case. See *Fresh & Green's of Washington, D.C., LLC*, 361 NLRB No. 35**,** slip op. at 1 fn. 1 (2014) ("[A] discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not take similar actions against all union adherents."). See also *Allis-Chalmers Corp.*, 286 NLRB 219, 219 fn. 1 (1987) (denying respondent's motion to reopen on the basis that it proffered evidence concerning an alleged event or development that occurred after the close of the hearing).

IT IS ORDERED that the Respondent's Motion for Reconsideration and/or Reopening of the Record is denied.[3]

Dated, Washington, D.C., June 12, 2017.

Philip A. Miscimarra,	Chairman
Mark Gaston Pearce,	Member
Lauren McFerran,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] Chairman Miscimarra disagreed with his colleagues' remedy in the underlying decision ordering the Respondent to compensate affected employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. He also disagrees that a motion to reopen the record must relate to proffered evidence that could have been presented at the hearing, and he points out that Sec. 102.48(c)(1) of the Board's Rules and Regulations permits the introduction, on a motion to reopen the record, of "evidence which has become available only since the close of the hearing," which may include evidence regarding posthearing events. Although Chairman Miscimarra adheres to those views, he nevertheless agrees that the Respondent has not presented "extraordinary circumstances" warranting reconsideration or reopening of the record, and he therefore joins his colleagues in denying the Respondent's motion.